85-563

Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

WILLIAM M. SHEFFIELD,

Petitioner,

v.

THE NORTH CAROLINA STATE BAR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

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10 7 pp

QUESTIONS PRESENTED

1. Although the North Carolina Court of Appeals recognized that it was required to review the "whole record" and that the burden of proof was "clear, cogent and convincing evidence", it applied the same standard of review as to cases wherein the burden of proof is a preponderance of the evidence. The question is whether in cases where the two rules apply, due process requires the appellate court to take and consider the two rules together and determine whether or not the proof conforms to the required standard.

2. At the hearing, extensive evidence relating to the character of petitioner was excluded. The question is whether, in a quasi-criminal proceeding, due process requires the admission of evidence showing:

(a) The good character of the petitioner;

(b) The fitness of petitioner to practice law when that fitness is directly in question; and

(c) Specific acts wherein petitioner acted ethically and against his substantial pecuniary interests in declining or withdrawing from cases involving future fraud or criminal activities by clients, such evidence being offered to support petitioner's claim that he had refused to represent his former client for similar reasons (prospective perjury).

3. Whether Disciplinary Rules 1-102 (A)(6) and 9-102(B)(3) of the North Carolina Code of Professional

Responsibility are so vague that potential offenders do not receive adequate notice of prohibited or required conduct in violation of fundamental requirements of due process of law.

4. Pursuant to the rules governing disciplinary hearings, the Secretary of the State Bar is to issue subpoenas for the appearance of witnesses upon request, and to compel their attendance. Petitioner requested a subpoena for a critical witness. A subpoena was issued, but failed to produce the appearance of the witness, who was in federal custody. The question is whether the exclusion of the witness's affidavit under those circumstances, under the relaxed rules of evidence governing such hearings, and without the hearing committee even reading the affidavit to determine whether its language gave some assurance

that it could be considered and given some weight, violated due process of law.

5. Whether the hearing committee should have been estopped from concluding that petitioner had violated a matter entrusted to him when the former client had no right to rely on any theory of entrustment in that he had no right to the assistance of petitioner in committing perjury and a fraud upon the court.

6. The North Carolina County Appeals held that the exclusion of evidence of the former client's trafficking in illegal drugs from the head of the Durham County Narcotics Unit was error, but that the error was harmless. The question is whether, in a case where almost all of the evidence against the petitioner was the unsubstantiated testimony of the former

client, exclusion of such evidence was harmless or prejudicial.

7. Whether, in a case where almost all of the evidence against petitioner came from the testimony of the former client, the client's credibility is subject to review under a review of the whole record.

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No.

WILLIAM M. SHEFFIELD, Petitioner

v.

THE NORTH CAROLINA STATE BAR, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the North Carolina Court of Appeals in this case.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals (Appendix A, infra, 1a-17a) is reported at 326 S.E.2d 320 (N.C.App.). The denial of petitioner's application for a writ of certiorari by the Supreme Court of North Carolina (Appendix B. infra, 36a) is not yet reported.

JURISDICTION

The judgment of the North Carolina Court of Appeals (Appendix A, infra, 1a-17a) was entered on March 8, 1985. The Supreme Court of North Carolina denied the petitioner's application for a writ of certiorari on July 3, 1985 (Appendix B, infra, 36a). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the United States Constitution provides in relevant part:

> "...(N)or shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. North Carolina General Statute 150A-51 provides in relevant part:

JURISDICTION

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2. North Carolina General Statute 150A-51 provides in relevant part:

"The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or

(2) Made upon unlawful procedure; or

(3) Affected by other error of law; or

(4) Unsupported by substantial evidence...in view of the entire record as submitted; or

(5) Arbitrary or capricious."

3. Disciplinary Rule 1-102(A)(6) of the North Carolina Code of Professional Responsibility provides:

A lawyer shall not ...(e)ngage in any other professional conduct that adversely reflects on his fitness to practice law."

4. Disciplinary Rule 9-102(B)(3) provides:

"A lawyer shall ...(m)aintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client coming into the possession of the lawyer and render appropriate accounts to his client regarding them."

5. Disciplinary Rule 7-102 provides in relevant part:

"(A) In his representation of a client, a lawyer shall not:

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent."

STATEMENT OF THE CASE

This case was decided by the North Carolina Court of Appeals upon the appeal of the petitioner from an order suspending him from the practice of law for three years entered by a Disciplinary Hearing Committee of the North Carolina State Bar.

The underlying facts may be briefly stated as follows:

Three lawsuits involving a former client of the petitioner formed the basis of the hearing. The first arose from a cause of action for personal injury when the client was injured in an automobile

accident on June 18, 1979. The second arose when the client was charged with first degree murder in the shooting of an eighteen year old man and assault with a deadly weapon with intent to kill inflicting serious bodily injury in the shooting of a sixteen year old boy. The third arose when the client was sued for wrongful death by the victim's widow on October 28, 1980.

The personal injury case was settled for $40,000. The murder and assault cases were tried and the client was found not guilty on February 9, 1981. Petitioner never made any appearance or entry into the wrongful death case. A default judgment was entered in September of 1981.

The client's claim that petitioner had withheld funds due him from the settlement and that petitioner had failed to file an answer in the wrongful death

case formed the basis of the complaint against the petitioner.

Evidence showed that the petitioner's law offices were completely destroyed in an uninsured (for him) fire which burned down the building in which the offices were located, making it difficult for petitioner to produce contracts and records to dispute the client's claim that petitioner had agreed to represent him for $2,000. This fire had occurred in December of 1980, leaving petitioner without an office or secretarial assistance during much of the period relevant to the complaint.

Petitioner was able to produce witnesses who had first hand knowledge of the fee arrangements. It was stipulated that he was entitled to a one-third contingency fee in the personal injury case ($13,333.33). The Disciplinary Hearing Committee (DHC) found that there

was a fee agreement between petitioner and the client of $25,000 for trial of the murder and assault charges. The DHC found that petitioner did not withhold any funds to which the client was entitled and further found that petitioner did not engage in any conduct involving dishonesty, deceit or misrepresentation.

Petitioner offered evidence that he had never agreed to represent the client in the wrongful death case; that he had not been paid to do so; and that he had specifically refused orally and in writing to take the case because the client had admitted to him after the criminal trial that he had committed perjury as to certain material facts and that he intended to testify to the same untruths at any civil trial.

However, the DHC found that petitioner, by failing to file an answer

in the wrongful death case, had neglected a legal matter entrusted to him and had intentionally failed to carry out a contract of employment; that, although he had kept no funds to which he was not entitled, he had failed to maintain complete records and to render appropriate accountings; and that he had not appropriately responded to an inquiry of the Bar.

Based on these findings, the DHC ordered that petitioner be suspended from the practice of law for three years.

There being no review of the DHC's actions, either as to validity or as to discipline, by the full Disciplinary Hearing Commission or the Bar Council, petitioner appealed to the North Carolina Court of Appeals. That court affirmed the DHC on March 8, 1985. Petitioner applied to the Supreme Court of North Carolina for a Writ of Certiorari. In

conference, the Supreme Court of North Carolina denied the petition without opinion on July 3, 1985.

RAISING OF THE FEDERAL QUESTION

The question of violation of the due process clause of the Fourteenth Amendment to the United States Constitution by the exclusion of evidence by the DHC was raised at the hearing, both by Motion (App. C, p 51a) and by exceptions taken to exclusionary rulings, and by offers of proof (Apps. C-E, pp 42a, 46a, 47a-51a, 51a-55a, 56a-63a, 64a-71a). These matters were also raised in the petitioner's brief to the North Carolina Court of Appeals.

The question of the appropriate standard of appellate review was raised in petitioner's brief, citing the Fourteenth Amendment. Similarly, the question of whether DR 1-102(A)(6) and DR 9-102(B)(3) are void for vagueness under

the Fourteenth Amendment was raised both at the hearing and in petitioner's brief.

REASONS FOR GRANTING THE PETITION

It would be wrong to ask this Court to expend its limited time to review the decision below merely because that decision is in error. Even to ask that this Court consider this petition imposes a responsibility on counsel to be as concise as possible, to restrain himself from metaphorical hyperbole, and to refrain from over-citation and over-argument on points familiar to this Court.

It is clear that a fair consideration of the record reveals that the decision below is clearly wrong, resulting in the deprivation of a precious property right of the petitioner, his right to practice law. The decisions of the DHC and the North

Carolina Court of Appeals deprived petitioner of his right to due process of law as guaranteed by the Fourteenth Amendment to the United States Consitution in numerous, highly prejudicial instances, as set forth below:

1. Because there is no adequate judicial review (or, indeed, any review) of the decision of the DHC, the appellate court must review the "whole record". The burden of proof is "clear, cogent and convincing". There are very few cases where an administrative body must make decisions based on clear, cogent and convincing evidence. Hence, there are few reported decisions on point. Most reported cases arise from equitable causes of action to set aside deeds or find their bases in some other type of equitable relief based upon fraud.

The North Carolina Court of Appeals followed one line of cases when it applied the same standard of review to this case as it would to a case using review upon the "whole record" in which the burden of proof was merely a preponderance of the evidence. Thusly, it affirmed, finding the decision of the DHC was supported by substantial evidence. Petitioner submits that such reasoning is flawed and deprives him of due process of law by rendering the requirement that proof must be by clear, cogent and convincing evidence meaningless. See Justice Traynor's opinion in Beeler v. American Trust Co., 24 Cal 2d 1, 147 P2d 583 at 600 (1944), stating in part:

> "...the appellate court in reviewing the evidence should determine... whether the trier of facts could reasonably conclude that it is

highly probable that the fact exists. When it holds that the trial court's finding must be governed by the same test with relation to substantial evidence as ordinarily applies in other civil cases, the rule that evidence must be clear and convincing becomes meaningless."

See to the same effect: Langford et al v. Sigmon, 292 Ky 650, 167 SW2d 820 (1943); Hurst v. Stowers, Okl, 399 P2d 477 91965); Equitable Life v. Aaron, 108 F2d 277 (6CA, 1940); Page v. Page, 132 Va 63, 110 SE 370 (1922); Frolich v. Aikman, 194 Mich 569, 161 NW 867 (1917); Kellow v. Bumgardner, 196 Va 247, 83 SE2d 391 (1954); Baum v. Ward, Ark, 199 SW 529 (1917); Messinger v. Messinger, Okl, 341 P2d 601; Equitable Life v. Johnson, 81 F2d 543, 547.

The decision of the North Carolina Court of Appeals is also in conflict with the decision of this Court in Schneiderman v. United States, 320 U.S. 118. Although the factual basis of that case (the cancellation of the certificate of citizenship of an avowed communist) dealt at length with a number of issues, the aspect of the case applicable here is that the U.S. District Court made findings (at p 129) which the Circuit Court of Appeals affirmed on the grounds that the finding was not "clearly erroneous" (p 131). This Court determined first that the burden of proof was "evidence of a clear and convincing character" (p 123, 135), and then determined that this Court should review the decisions and finding below in that light, stating at page 135:

> "...(I)t must sustain the heavy burden which rests upon it to prove lack of attachment by 'clear, unequivocal, and convincing' evidence which does not leave the issue in doubt. When the attachment requirement is construed as indicated above, we do not think the Government has carried its burden of proof."

See further reasoning of this Court at pp 153-154 and 158-159 on the same points.

This question is one which needs a definitive resolution, as it is likely in the future that professional bodies and other administrative agencies which deal with substantial property rights will be required to conform to higher degrees of proof in their hearings, and that their decisions will be often appealed.

2. At the hearing, important evidence of the petitioner's good character was excluded (App. E, pp 61a-71a), including affidavits from his commander in Vietnam, a Military Judge, and the Associate Deputy Counsel of the Central Intelligence Agency. The Court of Appeals stated that one rationale for exclusion was that the issue of his fitness to practice law was not at issue (App. A p 30a), which is obviously not the case. It also was of the opinion that the evidence was too remote in time, although counsel from the CIA stated that he was still in professional contact with petitioner and had been since 1972. Petitioner would submit that his character as shown under the stress of combat is relevant.

Petitioner offered evidence of specific acts for the purpose of showing

his habit and custom in dealing with certain types of ethical problems similar to his claim that he had refused to represent his former client on the wrongful death case because the client had indicated that he intended to perjure himself. The acts (App. C pp 42a-51a) involved his withdrawal from representation of a drug defendant who planned to kill an undercover officer, and his warning the authorities, losing a large fee and placing himself in some physical danger, and in refusing to act as attorney for clients planning a fraudulent insurance claim, and in notifying the insurance company of the conspiracy. This evidence was excluded. Petitioner submits that he was thereby deprived of competent evidence in violation of his right to due process of law.

3. Disciplinary Rule 1-102(A)(6) is so vague as to be void. The American Bar Association has recognized this by deleting it from its Model Code of Professional Responsibility on that reasoning. See ABA/BNA Lawyer's Manual on Professional Conduct 101:1001. Hence, to base an order of discipline on a purported violation of this rule violates the most fundamental right to due process of law under the Fourteenth Amendment.

Disciplinary Rule 9-102(B)(3) provides for "complete records" and "appropriate accounts", but nowhere defines these terms or gives examples of acceptable procedures. No evidence was introduced by the complainant as to what "complete records" and "appropriate accounts" should be. It was stipulated that petitioner kept check stubs,

cancelled checks, and bank statements relating to the former client and that he listed fees and expenses on the file folder of the client's file. The complainant's own witness (App. C p 41a) who had been a legal secretary for thirty-six years, including six years with the petitioner, testified that petitioner's records were on a par with other lawyers in the local bar. Hence, as written, and as applied to petitioner, this rule is also so vague as to be void and any discipline based on a purported violation is violative of due process as above.

4. The petitioner attempted to obtain the appearance of an important witness who had direct knowledge that the former client was lying about the most critical allegations in the complaint. Under the rules, his presence was to be

obtained by the State Bar upon request by petitioner, which was made (App.D p 56a). However, his appearance was not obtained. Petitioner offered his affidavit, which contained all the elements which would make it trustworthy (App. D p. 58a). Counsel made a strong constitutional argument for its admission, but it was excluded, the chairman refusing to even read the affidavit before ruling to see if it should be admitted under the relaxed rules governing the hearing (App. C pp. 51a-55a).

The exclusion of this affidavit deprived petitioner of important evidence in his defense in violation of due process of law under the Fourteenth Amendment.

5. Petitioner offered testimony showing that the former client intended to commit perjury at the prospective

trial of the civil wrongful death case. Petitioner thus submits that the finding that he neglected a legal matter entrusted to him was without basis in that the client clearly had no right to the assistance of counsel in presenting perjured testimony or in filing an answer containing a false statement. See Disciplinary Rule 7-102(A)(2), (4), (5) and (7). The former client should also be estopped by his actions from any reliance based on entrustment.

There was clearly no contract of employment between petitioner and the former client as is shown by the testimony of the former client himself (App. C pp 38a-40a) and the testimony of his father (App. C p. 40a).

6. The DHC excluded testimony by the head of the narcotics unit that the former client had a criminal record and

was currently under investigation for illegal drug activities. The Court of Appeals conceded that the exclusion was error (App. A p 34a), but stated that the error was harmless. The rationale was that the DHC knew that Fowler had been tried for murder, and another witness testified later on in the hearing concerning Fowler's involvement with drug activities. Fowler was found not guilty of the murder (through the efforts of petitioner) and the court should know that a verdict of not guilty is not proper grounds for impeachment. The other witness was himself a drug dealer. The testimony of a disinterested law enforcement officer should reasonably be expected to have greater weight and credibility, particularly where the "whole record" test is applicable. The exclusion of this testimony was

prejudicial, not harmless, error.

7. The Court of Appeals ruled that the credibility of the former client and the credibility of the petitioner were not properly before it for review (App. A p 11a).

Counsel for petitioner respectfully submits that under the two rules controlling the review of this case, i.e., the "whole record" test and the burden of proof by "clear, cogent and convincing evidence", the Court of Appeals was required to review the credibility of the two principal parties to this action.

It is incredible that the DHC or the Court of appeals could have on the one hand found that the client was not truthful about the most critical matter in the proceeding (he said that

petitioner had agreed to represent him in the murder and assault case for $2,000--- the DHC found that not to be true, that there was a fee agreement between petitioner and client of $25,000) and still find that his other allegations about the wrongful death case constituted clear, cogent and convincing evidence of the facts alleged. The client was, in addition to being found untruthful about the fee and the improper retention of funds by the petitioner, shown to be involved in illegal drug sales, and was alleged by petitioner to have committed perjury.

On the other hand, even though much character evidence was excluded, it was put in evidence (uncontroverted by the complainant, who could produce not one witness to challenge the good character of petitioner) that petitioner served in

the U.S. Army from 1960-1963 and from 1966-1971, rising from the rank of Private to Captain in the Regular Army; that he served three tours of duty in Vietnam, where he was decorated for valor and service; that he was an Assistant District Attorney; that he was elected President of the 14th Judicial District Bar; that he was appointed by two governors--one Republican, one Democrat--as Chairman of the Commission of Youth Services (a policy-making group in charge of the juvenile training schools of the State), a group made up of a U.S. Senator, the head of the State Administrative Office of the Courts, a judge, three legislators, a newspaper editor, and one layman; that he had taught Civil and Criminal Trial Practice at Duke University School of Law; and that he enjoyed an excellent reputation

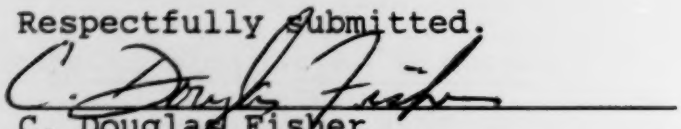
for competence and honesty among the bar, law enforcement, and the community.

Counsel submits that due process requires that some consideration be given to the respective credibilities of the Complainant and the Petitioner.

CONCLUSION

For the foregoing reasons, your petitioner respectfully prays that a Writ of Certiorari should issue to review the Judgment and Opinion of the North Carolina Court of Appeals.

Respectfully submitted,



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September 1985

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APPENDIX A

NORTH CAROLINA COURT OF APPEALS

Filed: 5 March 1985

THE NORTH CAROLINA STATE BAR

v.

WILLIAM M. SHEFFIELD, Attorney

North Carolina State Bar
No. 83DHC4

Appeal by defendant from Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar. Order entered 17 October 1983. Heard in the Court of Appeals 9 January 1985.

David R. Johnson for plaintiff-appellee North Carolina State Bar.

Gary K. Berman for defendant-appellant.

BECTON, Judge.

I

On 4 May 1983, plaintiff, the North Carolina State Bar, filed a complaint against defendant, William M. Sheffield, a practicing attorney, based upon the grievance of Billy Wayne Fowler, a former client of defendant. A hearing was held before a Hearing Committee of the Disciplinary Hearing Commission of the state Bar on 15, 16, and 22 September, 1983. Based upon its findings of fact and conclusions of law, the Committee entered an order of discipline, suspending defendant from the practice of law for a period of three years. Defendant appealed, arguing that certain findings of fact were not supported by clear, cogent and convincing evidence; that certain conclusions of law were not properly supported by the findings; that it was error for the Commission to

conclude that defendant had violated any Disciplinary Rules of the Code of Professional Responsibility, and to enter an order imposing discipline. We have carefully examined the record of the proceeding below, and the orders based thereon, and find them free from error. We therefore affirm.

II

Factual Background

Defendant was admitted to the bar in North Carolina in September 1972, and at all times pertinent to this action maintained a law office in Durham, North Carolina. Three separate lawsuits involving Billy Wayne Fowler (Fowler) are connected with the grievance Fowler ultimately filed against defendant. The first lawsuit arose from a 19 June 1979 automobile accident in which Fowler was

injured. Shortly thereafter, defendant was offered employment in that case by Fowler's father. Defendant accepted on a contingency fee basis, and in August 1979 notified the other driver's insurance carrier that he was representing Fowler. Fowler and his father both periodically brought bills arising from the accident to the defendant.

On 19 June 1980, while settlement negotiations in the personal injury suit were still ongoing, Fowler was arrested and charged with the murder of Tony Holland and assault with a deadly weapon inflicting serious injury on Terry Holland. Fowler's father immediately contacted defendant about representing his son on the criminal charges. Defendant accepted the employment and subsequently requested and received two separate payments of $1,000 each from

Fowler's father on 23 June and 3 July 1980. Although Fowler denies ever discussing fees for the criminal case with the defendant, the defendant testified, and the committee found as a fact, that the defendant and Fowler agreed that defendant would represent him on the criminal charges for a fee of $25,000. The criminal charge was tried in February 1981. Defendant appeared as counsel for Fowler, who was acquitted of all charges against him.

On or about 13 August 1980, defendant and the insurance company had agreed to settle the personal injury case for $40,000. Defendant delivered a draft to Fowler at the Orange County jail on 15 August 1980. Fowler executed a release, endorsed the draft, and returned the documents to defendant, who deposited the draft that same day in a checking account

labelled a "trust account." Between 15 August and 29 October 1980, the date of the next deposit, defendant wrote four checks from the account totalling $9,371.34, which he noted were for payment of fees from Fowler, numerous checks to pay business and personal obligations totalling in excess of $21,000, and a check for $1,000, of which approximately $25 was used for Fowler's benefit.

On 28 October 1980, a complaint in a wrongful death action was filed against Fowler by Patricia Holland, Tony Holland's widow and the administratrix of his estate. The complaint was delivered to defendant's office by Fowler's father. Defendant did not respond to subsequent inquiries from opposing counsel as to whether he represented Fowler in this matter. No responsive pleading was ever

filed and a default judgment for $200,000 was ultimately entered against Fowler.

On 24 August 1982, Fowler filed a grievance against the defendant with the Grievance committee of the North Carolina State Bar concerning defendant's handling of funds in the personal injury case and his representation in the wrongful death action. On 5 October 1982, defendant received that Committee's Letter of Notice, giving him 15 days to respond to the grievance filed against him; however, defendant never responded to this letter. On 23 March 1983, defendant was served with a subpoena by the Committee requiring him to appear and produce his records with regard to his representation of Fowler. The subpoena directed his appearance on 6 April 1983. The parties stipulated that defendant

failed to appear in response to the subpoena or make any other reponse to the Committee prior to 6 April 1983. This action was filed by the State Bar on 4 May 1983.

III

Defendant's central argument on this appeal is that six of the Committee's findings of fact were not supported by clear, cogent and convincing evidence drawn from the whole record. The standard of proof in attorney discipline and disbarment proceedings is one of "clear, cogent and convincing evidence." Rules of the North Carolina State Bar, Art. IX, Sec. 14(28). See In re Palmer, 296 N.C. 638, 252 S.E.2d 784 (1979)(adopting standard). Clear, cogent and convincing describes an evidentiary standard stricter than a preponderance of

the evidence, but less stringent than proof beyond a reasonable doubt. In re Montgomery 311 N.C. 101, 316 S.E.2d 246 (1984). It has been defined as "evidence which should fully convince." Williams v. Blue Ridge Bldg. & Loan Ass'n., 207 N.C. 362, 177 S.E. 176 91934).

The standard for judicial review of attorney discipline cases is the "whole record" test. N.C. State Bar v. DuMont, 304 N.C. 627, 286 S.E.2d 89 (1982). This test requires the reviewing court to

> "consider the evidence which in and of itself justifies or supports the administrative findings and...also (to) take into account the contradictory evidence or evidence from which conflicting inferences can be drawn.... Under the whole record test there must be

> substantial evidence to support the findings, conclusions and result.... The evidence is substantial if, when considered as a whole, it is such that a reasonable person might accept as adequate to support a conclusion."

Id. at 643, 286 S.E.2d at 98-9 (citations omitted). See Thompson v. Montgomery Bd. of Education, 292 N.C. 292, 288 S.E.2d 538 (1977) (reviewing court cannot substitute its judgment for that of the agency as between two reasonably conflicting views, although court could justifiably reach a different result.) Applying the "whole record" test to the contested findings of fact, we find each of them supported by clear, cogent and convincing evidence.

Before discussing the individual findings, defendant contrasts at length

his own credibility as opposed to Billy Fowler's testimony. Defendant argues that because each disputed finding is supported exclusively by Fowler's testimony, and because Fowler is an inherently incredible witness, the findings could not have been supported by clear, cogent and convincing evidence. The underlying premise of defendant's argument, that Fowler's testimony alone is the basis for the findings, is faulty. First, other evidence supports each of the findings. Second, defendant's argument mistakenly assumes that the credibility of witensses is a matter properly before this Court. Our review is concerned only with the sufficiency of the evidence, not the credibility of witnesses. See State ex rel. Comm'r of Ins. v. Rate Bureau, 300 N.C. 381, 269

S.E.2d 547, reh'g denied, 301 n.c. 107, 273 S.E.2d 300 (1980) (credibility of witnesses and probative value of particular testimony are for administrative body to determine).

We turn to the individual findings. Defendant first contends that the Committee erred in finding that the defendant paid $1,804.40 from the trust account to John Myers on Fowler's behalf for private investigative services in connection with the criminal trial. Although defendant stipulated to this finding before trial, he seems to suggest that it is deceptive because Myers was paid a greater sum than $1,804.40. The uncontroverted evidence is that Myers received $1,804.40 from the trust account. Plainly, the finding is neither false nor deceptive, as it expressly relates to an amount paid Myers from the

rust account, and not from other
ources.

The Committee found that:

> The Defendant did not keep records from which he could determine at any one time what amount in his trust account belonged to any particular client. The defendant did not maintain a running balance of the proceeds due Fowler.

ot only is this finding supported by ompetent evidence, nothing in the record upports a contrary conclusion. efendant stipulated to the following:

> The only trust account records maintained by the defendant were check stubs, cancelled checks, and bank statements. The defendant did list fees and expenses on the file folder of the client's file but did not maintain any ledgers or other

records showing a running balance of an individual client's funds. (emphasis added.)

Defendant's argument does not even ddress the substance of the challenged inding. Defendant asserts that at the ime of the deposit of the $40,000 ettlement proceeds in defendant's trust ccount, Billy Fowler owed him a 13,333.33 contingency fee in the ersonal injury case, and a $25,000 fee or representing Fowler on the crdiminal harges. Defendant maintains that, based n these figures, it was "obvious" what he balance due Fowler was at any given ime. This contention is hollow. Whether determining the balance was a imple or complex calculation, the ndisputed evidence is that no records ndicating the balance due were ever ept.

The Committee also found that efendant never rendered an accounting of he disbursement of the settlement roceeds. While Billy Fowler denied ever aving received such an accounting, the efendant points to three occasions when e discussed finances with Fowler as roof that he rendered an accounting. He estified that in August 1980, when he rought the insurance settlement draft to owler, he discussed with Fowler "what we ad gotten, and where it was going and ow much was left." Defendant introduced he voucher portion of the insurance raft into evidence. A hand-written alculation on the voucher shows the otal amount of proceeds, less efendant's fees for the personal injury nd criminal cases, and a remaining mount of $1,666.67. Defendant testified

these notations were made during his conversation with Fowler.

Defendant further testified to a "fairly simple accounting" given Fowler in December 1980, when defendant claimed he agreed to represent Billy Fowler's brother Danny. Defendant testified that this accounting disclosed a balance of less than $1,000. Finally, defendant stated that during jury deliberations at Fowler's criminal trial in February 1981, he and Fowler went over some figures in writing. None of the three alleged accountings ever considered the $2,000 paid to defendant by Billy Fowler's father for investigative work. In our view, none of these three transactions between defendant and Fowler can be considered an accounting, and the Committee did not err, based on the whole

record, in finding that defendant had never rendered an accounting.

The defendant next challenges two related findings of fact. The first finding recites that in November 1980, the defendant accepted the Complaint in the wrongful death action delivered to him by Fowler's father and that

> defendant did not advise either Fowler's father or Fowler that he would not represent him in the civil action at that time or prior to the criminal trial. Defendant accepted employment in the civil wrongful death action and the relationship of attorney and client was established between the defendant and Billy Wayne Fowler with respect to the defense of such action.

The second finding reiterates that

defendant did not advise Fowler that he would not represent him, and adds that defendant did not respond to the inquiries of opposing counsel regarding the case, and that "Fowler believed the Defendant was handling the civil action appropriately."

Defendant admits that the wrongful death complaint was left at his office by Billy Fowler's father in November 1980, and that he told the elder Fowler that the Complaint could be worried about later. Although defendant testified otherwise, Billy Wayne Fowler stated that defendant never notified him he was not handling the action, and that about a week after his acquittal on the murder charges, Fowler asked the defendant "how everything was coming along" and defendant responded that "everything was going beautifully."

Defendant maintains that a few days after the acquittal, Fowler informed him that he intended to perjure himself in connection with the wrongful death case, and for that reason, defendant testified that he told Fowler at least twice he would not represent him, and sent him two letters to the same effect. Defendant's position seems to be either that he never accepted employment in this case, or that in any event he withdrew upon discovering his client's intention to commit perjury. We find ample evidence to support both that defendant accepted employment in the wrongful death case, and that he never withdrew.

As to whether defendant accepted employment, we observe that the relation of attorney and client may be implied from the conduct of the parties, and is

not dependent on the payment of a fee, nor upon the execution of a formal contract. E.F. Hutton & Co. v. Brown, 305 F. Supp. 371 (S.D. Texas 1969). The dispositive question, then, is not, as defendant suggests, whether there was an express verbal agreement between the parties, or whether the attorney-client relationship in the wrongfuld death case was established in the same manner as in the earlier cases defendant handled for Fowler, but, rather, whether defendant's conduct was such that an attorney-client relationship could reasonably be inferred. The elder Fowler's delivery of the complaint to defendant's office, in light of the fact that defendant was already representing Fowler on other matters and that he never told Billy Fowler he would not be representing him

in the wrongful death case, is some evidence of an attorney-client relationship. At least one court has reached this conclusion on markedly similar facts. Rice v. Forestier, 415 S.W.2d 711 (Tex. Civ. Appl. 1967)(where citations left at an attorney's office by client, and attorney never declined to represent client, attorney had duty to inform client he was not going to file an answer), and, in this case, there is even more evidence supporting the Committee's finding of an attorney-client relationship.

The two letters written to Fowler further indicate that defendant accepted employment, and no indication that he declined it. The first letter advises Fowler against filing a counter- claim in the wrongful death action, and also encourages him to file for bankruptcy.

See Togstad v. Vesely, Otto, Miller & Keefe, 291 N.W.2d 686 (Minn. 1980)(rendering of legal advice established attorney-client relationship). Accord Hunt v. Disciplinary Bd. of the Ala. State Bar, 381 So. 2d 52 (Ala. 1980). The second letter, dated 23 March 1981, states in reference to the lawsuit that "I do not see that I can handle this for you for a number of reasons," and adds, "[p]lease come by the office sometime this week or next so we can discuss this." At best, this letter bespeaks a somewhat equivocal intention on defendant's part to end his involvement with the lawsuit. It is not the legal equivalent of withdrawing from representation. See Code of Professional Responsibility of the N.C. State Bar, D.R. 2-109(A)(2) (procedure for withdrawal).

Furthermore, it is established by uncontroverted evidence and defendant's own admissions that he received two letters from opposing counsel in the lawsuit dated 16 March 1981 and 26 May 1981. The first letter informed defendant of the trial date and then requested an answer. Defendant never responded. The second letter simply requests: "Please let me know whether you represent Billy Wayne Fowler in connection with this." Defendant never replied to this letter, either. Thus even taking into account defendant's testimony that he told Fowler he would not represent him in this matter, the whole record contains substantial evidence supporting each aspect of the two challenged findings.

IV

Defendant assigns error to three conclusions of law made by the Committee in that they were supported by neither findings nor evidence. The first of the challenged conclusions reads:

> By failing to file a responsive pleading or otherwise take action on behalf of Fowler in the civil wrongful death action, the Defendant has neglected a legal matter entrusted to him and has intentionally failed to carry out a contract of employment in violation of Disciplinary Rules 6-101(A)(3) and 7-101(A)(2) of the Code of Professional Responsibility of the North Carolina State Bar.

Defendant's position that this conclusion is erroneous is premised on

his earlier argument that he never entered into a contract of employment. We have discussed how an attorney-client relationship was established between defendant and Billy Wayne Fowler as to this wrongful death case. Defendant nevertheless contends that, even if there were a valid contract of employment, he was ethically constrained from carrying it out once Fowler revealed his intention to commit perjury. DR. 7-102. Assuming defendant had a duty to withdraw, we have already reviewed the pertinent facts at length, supra, and are satisfied that defendant never actually withdrew from the case. DR 2-102(A)(2) contains the procedure by which an attorney may withdraw from a case. This procedure was not followed by the defendant.

The Committee next concluded that the defendant failed to maintain complete

records of the funds received on Fowler's behalf and render appropriate accountings to Fowler in violation of Disciplinary Rule 9-102(B)(3). This conclusion of law is based on findings that the defendant failed to maintain records from which he could determine at any one time what amount in his trust account belonged to a particular client, that defendant did not maintain a running balance of the proceeds due Fowler, and that he did not render Fowler an accounting of these proceeds. As discussed earlier, all these findings were supported by sufficient evidence. Defendant stipulated that the only trust account records he maintained were check stubs, cancelled checks, and bank statements. The minimal record-keeping requirements of Disciplinary Rule 9-102(B)(3)

concerning receipt and disbursement of funds include keeping a running balance of the funds kept in a trust account for a particular person. This conclusion is thus fully substantiated by findings based on sufficient evidence.

The final conclusion of law to which defendant assigns error states:

> By failing to respond to both the Letter of Notice and the subpoena the Defendant has failed to respond to a formal inquiry of The North Carolina State Bar in violation of N.C.G.S. Sec. 84-28(b)(3) and has engaged in conduct adversely reflecting upon his fitness to practice law in violation of Disciplinary Rule 1-102(A).(6) of the Code of Professional Responsibility of the North Carolina State Bar.

Defendant stipulated that he failed to respond to either the letter or the subpoena, which stipulations were embodied, nearly verbatim, in the Committee's findings. Defendant testified that he did not read the letter, and was somehow unaware of the return date on the subpoena. He argues that his failure to respond was not willful, but excusable, and that therefore the Committee's conclusion is erroneous. This argument is meritless. Defendant stipulated to his failure to respond. There is no requirement of either N.C. Gen. Stat. Sec. 84-28(b)(3)(1981) or Disciplinary Rule 1-102(A)(6) that such failure be willful or intentional. This conclusion is entirely accurate.

V

The defendant next makes several

assignments of error concerned with the Committee's exclusion of certain testimonial and affidavit evidence. Defendant first argues that it was error to exclude the testimony of five witnesses, including defendant himself, on the theory that the proferred testimony was admissible to prove character, habit and customary professional practices of the defendant. Defendant initially observes that the rules of evidence are relaxed in a disciplinary hearing, modeled as it is after a non-jury trial in a civil case. Rules of the North Carolina State Bar, Art. IX, Sec. 14 (12); In re Elkins, 308 N.C. 317, 302 S.E.2d 214, cert. denied, ___ U.S. ___, 78 L.Ed.2d 685, 104 S.Ct. 490 (1983) (administrative proceedings generally). He then argues that since the Committee was charged with

determining his fitness to practice law, his character was at issue, and as the standard for admissibility of evidence in these proceedings is lenient, the testimony should have been admitted.

Once again, defendant proceeds from a flawed premise. The Committee was to determine whether defendant had committed the specific acts alleged in the Complaint, not whether he was generally fit to practice law. Thus, his character was not at issue. Furthermore, three of the witnesses were asked about defendant's withdrawal from representing clients in other situations. Whether defendant would have been justified in withdrawing from the wrongful death case is irrelevant; the salient point is that he never withdrew. Also, these witnesses were permitted to state their opinion as

to defendant's character and reputation. Similarly, although defendant was not allowed to testify about any specific case in which he withdrew, he was allowed to testify on the subject of defendant's ability as a courtroom lawyer. As this witness moved away from Durham in 1978, the Committee properly excluded his testimony as being too remote to bear on the incidents in question. Furthermore, defendant's counsel failed to preserve this testimony for purposes of appellate review.

Defendant also submits that it was reversible error to exclude from evidence four affidavits offered by defendant. We disagree. Three of the affidavits were offered to show the good character, the fourth, by Hudson, to impeach the credibility of Billy Fowler. Affidavits

are generally inadmissible as evidence during trial, as they are an inherently weak method of proof, prepared without notice and without opportunity for cross examination. In re Griffin, 6 N.C.App. 375, 170 S.E.2d 84 (1969). Even if affidavit evidence was somehow appropriate in these proceedings, the three character affidavits were not admissible as the defendant's character was not at issue. Significantly, the Committee, in ruling that these affidavits were not admissible on the question of misconduct, stated that if the question of discipline were reached, it would be willing to consider character affidavits. See Rules of the North Carolina State Bar, ARt. IX, Sec. 14 (19). The affidavits, however, were never resubmitted.

As to Hudson's affidavit, defendant argues that as he was an unavailable witness, his affidavit should have been admitted. Not only is the affidavit of an unavailable witness not automatically admissible into evidence, we note that defendant never attempted to have Hudson's deposition taken which would have provided the State Bar with an opportunity to cross-examine. Finally, defendant concedes that Hudson's affidavit was for corroborative purposes only. For all the foregoing reasons, it was not error to exclude it.

Finally an objection was sustained to a question put to Durham Police Officer Nicholas Then concerning Billy Fowler's reputation. Officer Then testified out of the Committee's hearing that Fowler had a criminal record and was

under investigation for illegal drug activities. Defendant contends that it was reversible error to exclude this testimony. Although this objection should probably have been overruled, as character evidence is admissible to impeach a witness, we do not believe the defendant was prejudiced by the failure to overrule the objection. It was already before the Committee that Fowler had been tried for second degree murder, and another witness testified later on in the hearing concerning Fowler's involvement with drug activities.

VI

Based on the foregoing, we summarily reject defendant's final two arguments that the Committee erred in its conclusion that the defendant's conduct violated disciplinary rules and that it

erred in entering an order imposing discipline. Defendant received a fair hearing, free from error. We accordingly

Affirm

Judges JOHNSON and COZART concur.

March 8, 1985, J. Dayle Williams, Deputy Clerk of the Court of Appeals of North Carolina

APPENDIX B

No. 248P85 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

THE NORTH CAROLINA STATE BAR	) ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS
v.	
WILLIAM M. SHEFFIELD, Attorney	

****

Upon consideration of the Defendant's petition filed in this matter for a writ of certiorari to review the decision of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 3rd day of July, 1985.

s/Frye, J.
For the Court"

WITNESS my hand and seal of the Supreme Court of North Carolina, this the 8th day of July 1985.

J. GREGORY WALLACE
Clerk of the Supreme Court

APPENDIX C

NECESSARY PORTIONS OF THE RECORD AS SET FORTH IN THE TRANSCRIPT

Billy Wayne Fowler:

Vol. 1, p 25

Q. While you were in Central Prison, were you served with a law suit?

A. Yes, sir, from Patty Holland.

Vol. 1, p 26

Q. Now, did you personally discuss with the defendant that lawsuit?

A. No, sir. I left that to my daddy because I couldn't do no talking...

Vol. 1, p 29

Q. (Mr. Johnson--Bar counsel) Did you talk to Mr. Sheffield after the trial?

A. Yes, sir.

Q. Did you discuss the civil lawsuit that was pending?

A. No, sir. That was the furtherest (sic) thing from my mind that day.

Q. Did you go to see the defendant after the trial was over?

Vol. 1, p 30

A. Yes, sir.

...Q. Did you discuss the civil lawsuit filed by Patty Holland at that time?

A. No, sir...

Vol. 1, p 64

Q. In fact he never told you he was going to represent you against Patty Holland, isn't that true?

A. I was in prison. He couldn't have talked to me.

Q. I'm talking about now--

A. (interposing) No.

Q. --after the criminal trial was over?

A. He has never discussed it, no.

Vol. 1, p 67

A. I never discussed anything about the lawsuit--I mean, the civil suit, the one

concerning Patty Holland, that is, as specified.

William Henry Fowler:

Vol. 1, p 144

Q. He (defendant) never agreed that he would defend Billy at that time in the civil action, did he?

A. No, sir.

Q. And as a matter of fact, you never engaged in any discussion with Mr. Sheffield about what fee Mr. Sheffield might charge to defend the civil action, right?

A. No, sir.

Q. And--and basically that one discussion with Mr. Sheffield is the only time you ever talked about the civil papers with him, right?

A. That's right.

Kathleen Morris:

Vol. 1, p 187

Q. Mrs. Morris, you've been a legal secretary for a long time, have you not, Ma'am?

A. Thirty-six (36) years.

Vol. 1, p 192

Q. How would you describe the records kept by Mr. Sheffield?

A. Well, having worked for several lawyers, it's par for the course.

Colloquy between defense counsel and Chairman Wyatt:

Vol. 1, p 224

CHAIRMAN WYATT: It's not a criminal hearing, is it?

MR. LOFLIN: It is not a criminal--well it is a quasi-criminal hearing.

CHAIRMAN WYATT: Is it your position that

Vol 1, p 225

in view of the discipline that may be

involved here, that it has criminal characteristics to such an extent that character evidence is admissible at this point?

MR. LOFLIN: Yes, sir.

CHAIRMAN WYATT: On the question of misconduct?

MR. LOFLIN: On the question--yes, yes.

CHAIRMAN WYATT: I'm so satisfied. Proceed.

James C. Fuller:

Vol. 1, p 236

Q. And Mr. Fuller, in--in connection with your work with Mr. Sheffield, was there--was there a time to your knowledge that he withdrew from a case, and then provided your division or department with certain information?

MR. JOHNSON: Objection.

CHAIRMAN WYATT: Overruled.

A. Yes, sir, there was.

Q. (Mr. Loflin) And what type was that, a drug case?

MR. JOHNSON: Objection. Object to this whole line of questioning.

CHAIRMAN WYATT: Will you enlighten me as to the purpose of this testimony. It's a specific act, isn't it?

Vol. 1, p 237

MR. LOFLIN: It's a--if I can develop this, I contend this will show how Mr. Sheffield in--in a particular criminal case acted very ethically, particularly when someone's life may have been at stake. And Mr. Fuller has personal knowledge of this.

CHAIRMAN WYATT: I'll sustain the objection.

Vol. 1, p 311 (offer of proof)

Q. Mr. Fuller was there an occasion involving a drug case in which, to your

personal knowledge, Mr. Sheffield withdrew from the case?

A. Yes, sir.

Q. ...After he withdrew from representing the defendant in that case, did he come to you and have a conversation with you concerning the safety of one of the State's witnesses?

Vol. 1, p 312

A. ...Yes, he did.

Q. Okay. And was the State's witness about whom he expressed concern over her safety an undercover agent?

A. Yes.

Q. A law enforcement agent?

A. Yes, a police officer, a female police officer.

Q. ...What did Mr. Sheffield actually tell you to the best of your recollection about that?

A. He told me,

Vol. 1, p 313

about a week or two after he withdrew, that something had went on between him and his client which he did not like, and he withdrew from the case and that he feared that something was going to happen to the female officer that was involved in the buying of some drugs from this particular person he was supposed to have been defending.

Q. ...(Y)ou knew who the client was he was representing?

A. Yes.

Q. And you knew who the undercover police officer was, the female--

A. That's correct.

Q. You prefer not to state that, the names of those people for the record?

A. That's correct.

Q. Why?

A. Because of the

Vol. 1, p 314

possibility if I told who the man was he was going to defend, if it got out, it's a possibility he might--would be harmed in some way.

A. When you say "he", you mean Mr. Sheffield?

A. That's correct, because the man is out of prison now.

Sgt. William Earl Bond, Jr.:

Vol. 1, p 317 (offer of proof)

Q. Okay, in your own words, what did Mr. Sheffield do?

A. We received information through Mr. Sheffield to the organized crime chief that one of our officer's, involved in this undercover operation, life was in danger.

Q. Now, was this an undercover officer whose life was in danger?

A. Yes, right.

Vol. 1, p 318

Q. All right. And did you work with Mr. Fuller, the witness who just testified on this matter...?

A. Yes. On the basis of this information a twenty-four-hour surveillance was placed upon the officer for approximately two weeks until the case went to trial, and the officer was protected in the Courtroom.

John Franklin Hester:

Vol. 2, p 241

Q. (Mr. Loflin) Did you at any time, Mr. Hester, receive certain information, while you were employed on the legal staff

Vol. 2, p 242

of Nationwide, from Mr. Sheffield, concerning a potential fraudulent

automobile insurance claim, which Mr. Sheffield had knowledge?

MR. JOHNSON: Objection

CHAIRMAN WYATT: Sustained.

(Offer of proof)

A. In late 1982 I received a telephone call from Mr. Sheffield at my office at Nationwide, advising me that he had been contacted by a number of individuals who had solicited him to join in with them, in a fraud, claim, involving an automobile liability insurance policy. He indicated that Nationwide was involved in that they were the

Vol. 2, p 243

potential insurance company, insuring one of the conspirators.

He advised me that he had rejected their offer of becoming involved, and had advised them that their activities were

criminal in nature, that he would not condone, or be a party to their actions and that--that he advised them to discontinue any continued involvement, or any plans that they may have to continue this conspirary to fraudulently collect insurance money.

Mr. Sheffield advised me that he suspected that these individuals would seek the assistance of other legal counsel and that a lawsuit would be filed.

In my duties, as an attorney for Nationwide, I received suit papers on a regular basis, and I was to be on the lookout for these suit papers when they came in, involving these parties.

Q. Did he reveal, Mr. Hester, to you, the names of the individuals he suspected would be involved, or might be--

A. Yes he did.

Vol. 2, p 244

Q. And as a result of what he told you, what, if anything, did you do?

A. On receipt of these suit papers, which came in a few weeks later, I notified Mr. Lee Patterson, of the Law Firm ..., in Durham, to defend this action and that I suspected it was a fraud case.

We began and are continuing in discovery activities. Since that time, two of the conspirators have admitted their involvement in a conspiracy and are now helping us defend the lawsuit and avoid the collection of fraudulent money from our insurance company.

We plan to turn this over to the Durham District Attorney and to the State Bar for proper handling, because it

appears that another member of the Bar may be involved.

Colloquy between defense counsel and Chairman Wyatt:O

Vol. 2, p 250

MR. LOFLIN: But, I would like to tender a brief, for consideration in support of our position to the members of the Committee, if I may

CHAIRMAN WYATT: The affidavit of Hudson is ruled inadmissible.

MR. LOFLIN: ...First of all, the Rules of the Disciplinary Hearing Committee, itself, Section 14, sub-paragraph 12, dealing with the formal hearing procedures, such as we're in now, while it says, the proceeding shall conform as nearly as practicable, with the Rules of Civil Procedure, and so on, it does say, insofar as practicable.

Vol. 2, p 251

This body does not have subpoena power outside the State of North Carolina, where a material witness is located, and since there is no extraterritorial power to compel witnesses with material knowledge, to come from out of state, it is our position that--that an affidavit, such as the type--and I would like...to suggest the Committee should look at the affidavit, because if it does not, it cannot meet its obligation as rulers on the law, as well as the fact to rule on the objection and I...would ask you to review it(if not) then, Mr. Sheffield has been denied fundamental due process, but there is really no need of that because sub-section 12

Vol. 2, p 252

does give the Committee members the authority to deviate where necessary in the interest of justice, from the normal rules of court, including, of course, the admonition that--that those rules should always be followed where practical, but because this witness is out of state, the subpoena power does not reach out of state, especially to a person incarcerated in federal custody, that the affidavit that we offer in evidence, which flatly contradicts the testimony of the complaining witness, Fowler, whose credibility is certainly a key issue in this case, ought to be received...under the due process clause to the Constitution of the United States, the 14th Amendment, and, also, under Article 1, Section 19, of the Constitution of North Carolina.

Vol. 1, p 253

...MR. LOFLIN: And, on all of those grounds Mr. Chairman, we would request that the Committee, or the Chairman, reconsider its ruling, particularly in light of the constitutional argument I make and receive the affidavit...and to give it whatever weight the Committee deems the affidavit is entitled to.

CHAIRMAN WYATT: Thank you, Mr. Loflin, The Affidavit of Hudson, marked for identification as D-11, is ruled inadmissible.

Vol. 2, p 254

MR. LOFLIN: I would like the record to reflect the Committee, before making the ruling and denying reconsideration, declined to even consider the contents of the affidavit.

Now, there are other affidavits which I would like to offer in evidence...

D-12, the affidavit of Major General Michael D. healy, U.S. Army Retired.

Vol. 2, p 256

...D-13 the affidavit of...Colonel Pedar C. Wold.

...D-14, the affidavit of George W. Clarke,

...Associate General Counsel for the CIA...

Vol. 2, p 257

CHAIRMAN WYATT: Three. All right. The character affidavits of Healy, D-12, Wold, D-13, and Clarke, D-14 are ruled inadmissible on the question of misconduct...

MR. LOFLIN: I would like the record to reflect, again, the Committee did not even read the affidavits before ruling on their admissibility on this part of the hearing.

APPENDIX D

NORTH CAROLINA

WAKE COUNTY

BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR
83 DHC 4

THE NORTH CAROLINA STATE BAR, Plaintiff,
vs.
WILLIAM M. SHEFFIELD, Attorney, Defendant.
) SUBPOENA

TO: William Thomas Hudson
Federal Correctional Institution
Lewisburg, Pennsylvania

GREETINGS:

You are hereby commanded to appear before a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar at the Council Chambers, North Carolina State Bar Building, 208 Fayetteville Street Mall in Raleigh, North Carolina, at 10:00 o'clock, a.m., on the 15th day of September, 1983, to testify in the above-entitled action.

This subpoena is issued upon application of Defendant.

Issued this 12th day of September, 1983.

S/B.E. James
Secretary

Defendant's exhibit 16

AFFIDAVIT

WILLIAM T. HUTSON, being first duly sworn, deposes and says: I am currently serving a sentence of 5 years in the Federal Penitentiary at Lewisburg, Penn., for conspiracy to sell LSD, conspiracy to sell methamphetamine, and the carrying of a firemarm during the commission of a federal felony. I am also serving concurrently sentences arising from the State of North Carolina for manslaughter, sale and delivery of LSD, sale and delivery of counterfeit controlled substances, and false pretense. I was represented by William M. Sheffield, an attorney from Durham, North Carolina, in the drug charges.

About four months ago, Mr. Sheffield contacted me and asked if I would be willing to provide a statement or testify

about a Billy Wayne Fowler. Because of conversations we had had while he was representing me, Mr. Sheffield knew of contacts between Fowler and me. At first I refused on the basis that I might subject myself to further prosecution, and because I have never testified against anyone in all the cases I've had. I also didn't really think anyone would take anything someone like Fowler said seriously.

I am now informed by mr. Sheffield that a formal hearing, like a trial, is being held and that Fowler has charged Mr. Sheffield with stealing money from him after a murder trial. I understand that Fowler says the fee was $2,000 and that Mr. Sheffield says it was $25,000. I know it was $25,000 because Fowler told me that himself in a meeting we had in

April or early May of 1982. I was out of jail facing a charge of murder. I was selling methamphetamine and LSD. Billy Wayne Fowler met with me and we discussed him wanting to buy drugs from me. He apparently had some connections with some bikers in Orange County. We were talking about a number of things and Fowler was sort of puffing himself up. He knew I was charged with murder. He told me he had shot up two people who were hassling him and had killed one of them a couple of years ago in Hillsborough. He told me he had gotten off but it cost him $25,000. He told his lawyer had been William Sheffield from Durham. I already knew Mr. Sheffield from seeing him in the Durham County Jail while I was being held there.

A little while later I talked to Mr. Sheffield myself about representing me on

my murder charge. We talked about the fee and the facts of the case. I told him I didn't think I could pay as much as Fowler had paid. Mr. Sheffield said that Fowler's case was very difficult and he did not know how much he would charge for mine. We got together later and he said he had looked into the case and that he thought the State had a weak case against me, but that he would still have to do a lot of work if the case actually went to trial as a first degree murder case. He said he thought the State would probably try me for second degree murder and that his fee would be $10,000. He also told me that my court appointed lawyer, Richard Rigsbee, was a good trial lawyer and would do a good job for me.

I saw Fowler two or maybe three times after that. We met alone except

one time when he came by a house on Fern Street in Durham when Bonnie Wells and Barry Adcock were also present. We talked about drugs and about my murder case. I told him I had talked to Mr. Sheffield and might hire him for $10,000 and that I couldn't afford to front him anything. He said he understood and that he could get together some money from some of his friends. He was going to get back with me but I was arrested by federal agents on June 2, 1982, and have been in custody since that day. I never saw or heard from Fowler again.

Mr. Sheffield represented me on my drug charges in Durham and worked with other lawyers and the prosecutors so that I ended up pleading guilty to a number of (but not all) the drug charges and to manslaughter instead of murder. All of

the sentences, state and federal, were to run together.

Mr. Sheffield has represented me and a number of people I know. He also represented my son. He has always been fair and worked hard for me and everyone I've known anything about. I think what Billy Wayne Fowler is doing is wrong and untrue and I am willing to appear before a hearing or a judge and testify about what I know.

This the 12th day of September, 1983.

S/William Thomas Hutson

Sworn to before Eduardo Barias, Case Manager, authorized to administer oaths (18 U.S.C. 40041)

Defendant's Exhibit 11

APPENDIX E

STATE OF ILLINOIS COUNTY OF LAKE

AFFIDAVIT

Major General Michael D. Healy, U.S. Army, Retired, being first duly sworn, says that:

This affidavit is to attest to the unquestionable good character, high standards of personal and professional behavior, and reputation for total honesty and integrity of Mr. William M. Sheffield whom I have known of and served with on and off during the period 1960 thru 1971.

During the period 1960 to 1963, Mr. Sheffield served as a non-commissioned officer with the United States Army, 8th Special Forces Group (Airborne). During that period he was assigned to a highly sensitive, classified overseas operation

in Southeast Asia. His reputation was outstanding. I am knowledgeable of the fact that he was advised at that time to continue his education in order that the Army might avail itself of his further services as a commissioned officer. He did so during the period 1963 to 1966 and reentered the service as an Infantry Officer. Shortly thereafter, he was selected for duty with the Judge Advocate General Corps of the United States Army and Special Forces.

He acted as the command attorney of my command between 1969 and 1970 with the 5th Special Forces Group (Airborne) in the Republic of Vietnam. He was recognized from the National Executive Authority and Theater Commander on down for his tough-minded professional integrity and truthfulness in handling

the most sensitive and delicate national and international legal matters. His strength of character and ability to deal with the most extreme complex legal difficulties that could be faced by our army in the field was most highly regarded by all. He handled not only the most sensitive of classified information involving U.S. policy, but also extremely large amounts of United States funds which were entrusted to his care for supervision and proper legal disbursement. These funds ran into the hundreds of thousands of dollars and were handled by him under almost totally autonomous circumstances with minimal supervision for extended periods of time--he was patently honest in every circumstance!

During the period 1970 and 1971 while I

served in both Headquarters Department of the Army and as the Assistant Division Commander of the 82d Airborne Division I again had personal knowledge of the fact that Captain Sheffield enjoyed the highest reputation for being a no nonsense--tell it like it is--man of integrity and honor. I know that even when he was faced with senior officers applying unusual command influence placing him under extreme stress he was a man of his convictions who never faltered in telling the truth as it is.

I am, in addition to being a retired General Officer, the father of six sons, one of whom is a trial lawyer. The highest compliment I can pay Captain Sheffield is that if my sons lives were in severe jeopardy in war or in matters

of litigation, I would not hesitate to place them in his care.

S/Michael D. Healy
Major General, US Army (Retired)
Sworn to 12 September 1983

Defendant's Exhibit 12

WASHINGTON, D.C.

AFFIDAVIT

TO WHOM IT MAY CONCERN:

I have known Mr. William M. Sheffield since 1968. During the periods 1968-1969 and 1970-1972, he worked as an attorney in the United States Army Judge Advocate General's Corps under my direct supervision.

Throughout the time I have known him, Mr. Sheffield has demonstrated unusual strength of character. I have no hesitation whatsoever in vouching for his truthfulness, honesty and integrity.

S/Pedar C. Wold
Colonel JAGC
Senior Judge, Panel 5
U.S. Army Court of Military Review

Sworn to 12 September 1983

Defendant's Exhibit 14

STATE OF VIRGINIA COUNTY OF FAIRFAX

AFFIDAVIT

GEORGE W. CLARKE, being first duly sworn, deposes and says as follows:

1. I have been a member of the Bar of the State of Iowa since June, 1968, Counsel for the Central Intelligence Agency, Washington, D.C.

2. I have known William M. (Bill) Sheffield since mid-1970 when we were both serving in the U.S. Army and stationed together at Fort Bragg, North Carolina in the Staff Judge Advocate's Office of the U.S. Army John F. Kennedy Center for Military Assistance. From 1970-1972 I had frequent, if not daily, contact with Bill Sheffield on a professional and social basis and we became good friends. I developed a high

regard for Bill Sheffield's legal ability, integrity and sound judgment.

3. Since 1972 I have been in continuing contact with Bill Sheffield on both a professional and social basis. I believe him to be honest and trustworthy and of outstanding character. I would not hesitate to entrust to him a matter affecting my most important interest.

S/George W. Clarke
Sworn to 14 September 1983

Defendant's Exhibit 14